

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

V.O. Limited Partners, a California
Limited Partnership;
John Vidovich, LLC, a California
Limited Liability Company;
**Thriving Mountain View, Wang
Chiropractic, a Professional
Corporation**, a California
Professional Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of V.O. Limited Partners, a California Limited Partnership; John Vidovich, LLC, a California Limited Liability Company; Thriving Mountain View, Wang Chiropractic, a Professional Corporation, a California Professional Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially

1 equipped van.

2 2. Defendants V.O. Limited Partners and John Vidovich, LLC owned the
3 real property located at or about 175 E El Camino Real, Mountain View,
4 California, in May 2021.

5 3. Defendants V.O. Limited Partners and John Vidovich, LLC own the real
6 property located at or about 175 E El Camino Real, Mountain View, California,
7 currently.

8 4. Defendant Thriving Mountain View, Wang Chiropractic, a Professional
9 Corporation owned Thriving Chiropractic located at or about 175 E El Camino
10 Real, Mountain View, California, in May 2021.

11 5. Defendant Thriving Mountain View, Wang Chiropractic, a Professional
12 Corporation owns Thriving Chiropractic located at or about 175 E El Camino
13 Real, Mountain View, California, currently.

14 6. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained of,
17 and alleges a joint venture and common enterprise by all such Defendants.
18 Plaintiff is informed and believes that each of the Defendants herein is
19 responsible in some capacity for the events herein alleged, or is a necessary
20 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
21 the true names, capacities, connections, and responsibilities of the Defendants
22 are ascertained.

23
24 **JURISDICTION & VENUE:**

25 7. The Court has subject matter jurisdiction over the action pursuant to 28
26 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

28 8. Pursuant to supplemental jurisdiction, an attendant and related cause

1 of action, arising from the same nucleus of operative facts and arising out of
2 the same transactions, is also brought under California's Unruh Civil Rights
3 Act, which act expressly incorporates the Americans with Disabilities Act.

4 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
5 founded on the fact that the real property which is the subject of this action is
6 located in this district and that Plaintiff's cause of action arose in this district.

7
8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff went to Thriving Chiropractic in May 2021 (three times) with
10 the intention to avail himself of its goods or services motivated in part to
11 determine if the defendants comply with the disability access laws.

12 11. Thriving Chiropractic is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
15 to provide wheelchair accessible sales counters in conformance with the ADA
16 Standards as it relates to wheelchair users like the plaintiff.

17 13. Thriving Chiropractic provides sales counters to its customers but fails
18 to provide any wheelchair accessible sales counters.

19 14. One problem that plaintiff encountered was that the sales counter was
20 too high. There was no counter that was 36 inches or less in height that plaintiff
21 could use for his transactions.

22 15. Plaintiff believes that there are other features of the sales counters that
23 likely fail to comply with the ADA Standards and seeks to have fully compliant
24 sales counters for wheelchair users.

25 16. On information and belief, the defendants currently fail to provide
26 wheelchair accessible sales counters.

27 17. These barriers relate to and impact the plaintiff's disability. Plaintiff
28 personally encountered these barriers.

1 18. As a wheelchair user, the plaintiff benefits from and is entitled to use
2 wheelchair accessible facilities. By failing to provide accessible facilities, the
3 defendants denied the plaintiff full and equal access.

4 19. The failure to provide accessible facilities created difficulty and
5 discomfort for the Plaintiff.

6 20. The defendants have failed to maintain in working and useable
7 conditions those features required to provide ready access to persons with
8 disabilities.

9 21. The barriers identified above are easily removed without much
10 difficulty or expense. They are the types of barriers identified by the
11 Department of Justice as presumably readily achievable to remove and, in fact,
12 these barriers are readily achievable to remove. Moreover, there are numerous
13 alternative accommodations that could be made to provide a greater level of
14 access if complete removal were not achievable.

15 22. Plaintiff will return to Thriving Chiropractic to avail himself of its goods
16 or services and to determine compliance with the disability access laws once it
17 is represented to him that Thriving Chiropractic and its facilities are
18 accessible. Plaintiff is currently deterred from doing so because of his
19 knowledge of the existing barriers and his uncertainty about the existence of
20 yet other barriers on the site. If the barriers are not removed, the plaintiff will
21 face unlawful and discriminatory barriers again.

22 23. Given the obvious and blatant nature of the barriers and violations
23 alleged herein, the plaintiff alleges, on information and belief, that there are
24 other violations and barriers on the site that relate to his disability. Plaintiff will
25 amend the complaint, to provide proper notice regarding the scope of this
26 lawsuit, once he conducts a site inspection. However, please be on notice that
27 the plaintiff seeks to have all barriers related to his disability remedied. See
28 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff

encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

24. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

25. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and

1 the bathrooms, telephones, and drinking fountains serving the
 2 altered area, are readily accessible to and usable by individuals
 3 with disabilities. 42 U.S.C. § 12183(a)(2).

4 26. When a business provides sales or transaction counters, it must provide
 5 accessible sales or transaction counters.

6 27. Here, accessible sales or transaction counters have not been provided in
 7 conformance with the ADA Standards.

8 28. The Safe Harbor provisions of the 2010 Standards are not applicable
 9 here because the conditions challenged in this lawsuit do not comply with the
 10 1991 Standards.

11 29. A public accommodation must maintain in operable working condition
 12 those features of its facilities and equipment that are required to be readily
 13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 30. Here, the failure to ensure that the accessible facilities were available
 15 and ready to be used by the plaintiff is a violation of the law.

16
 17 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 18 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 19 Code § 51-53.)

20 31. Plaintiff repleads and incorporates by reference, as if fully set forth
 21 again herein, the allegations contained in all prior paragraphs of this
 22 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 23 that persons with disabilities are entitled to full and equal accommodations,
 24 advantages, facilities, privileges, or services in all business establishment of
 25 every kind whatsoever within the jurisdiction of the State of California. Cal.
 26 Civ. Code § 51(b).

27 32. The Unruh Act provides that a violation of the ADA is a violation of the
 28 Unruh Act. Cal. Civ. Code, § 51(f).

1 33. Defendants' acts and omissions, as herein alleged, have violated the
 2 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
 3 rights to full and equal use of the accommodations, advantages, facilities,
 4 privileges, or services offered.

5 34. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 6 discomfort or embarrassment for the plaintiff, the defendants are also each
 7 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 8 (c).)

9 35. Although the plaintiff encountered frustration and difficulty by facing
 10 discriminatory barriers, even manifesting itself with minor and fleeting
 11 physical symptoms, the plaintiff does not value this very modest physical
 12 personal injury greater than the amount of the statutory damages.

13
 14 **PRAYER:**

15 Wherefore, Plaintiff prays that this Court award damages and provide
 16 relief as follows:

17 1. For injunctive relief, compelling Defendants to comply with the
 18 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 19 plaintiff is not invoking section 55 of the California Civil Code and is not
 20 seeking injunctive relief under the Disabled Persons Act at all.


21 2. For equitable nominal damages for violation of the ADA. See
 22 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
 23 and any other equitable relief the Court sees fit to grant.

24 3. Damages under the Unruh Civil Rights Act, which provides for actual
 25 damages and a statutory minimum of \$4,000 for each offense.

26 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
 27 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: July 22, 2021

CENTER FOR DISABILITY ACCESS

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3 By: 
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5 Amanda Seabock, Esq.
6 Attorney for plaintiff
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